

REMARKS/ARGUMENTS

Applicants greatly appreciate the courtesy that the Examiner extended to their representative during the telephone interviews held on January 4, 2010. The discussions during the telephone interview have been taken into consideration herein.

Claims 20-22, 28-29, 34-39, and 41-52 are pending in the subject application, among which claims 20, 36, and 46 are independent. Claims 1-19, 23-27, 30-33, and 40 have been cancelled without prejudice. Independent claims 20, 36, and 46 have been amended to recite additional features in previously presented claims 32-33 and/or 40. Newly added claims 50-52 are supported by paragraph [0045] of applicants' published application (i.e., US 2004/0106921). No new matter has been added. Reconsideration of the subject application in view of the above claim amendments and the following remarks is hereby respectfully requested.

Claims 20-22, 28-29, and 32-49 have been rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,783,527 ("Drewry").

The claimed invention is conceived to correct spinal deformities including a deformity of scoliosis, kyphosis, or lordosis. According to the invention recited in independent claim 20, a superelastic elongated rod has "a pre-contoured shape of a normal degree of kyphosis and lordosis of the spine" and is deformed "to conform to a deformed portion of the patient's spine." The deformed superelastic elongated rod generates and applies "a correction force having a predetermined amount to correct the deformed portion of the patient's spine" until "the deformed spine resumes the pre-contoured shape to fully or substantially fully correct the spinal deformities."

The above recited features of independent claim 20 patentably distinguish over Drewry for the following reasons.

Independent claim 20 as amended includes features previously recited in claims 32-33 and 40. In the final Office Action, there is no reasoning as to how Drewry is relied on reject claims 32-33 and 40. Applicants hereby respectfully request that the Office Action provides specificity as to where in Drewry each and every feature of independent claim 20 is taught, so that applicants can properly response to the claim rejections.

Moreover, applicants submit that Drewry does not teach or suggest each and every feature recited independent claim 20. There is no teaching or suggestion in Drewry that its elongate member 80 has “a pre-contoured shape of a normal degree of kyphosis and lordosis of the spine” or is deformed “to conform to a deformed portion of the patient’s spine” to generate a correction force; nor does the deformed elongate member 80 subsequently resume the pre-contoured shape to correct the spinal deformity. Drewry’s elongate member 80 operates differently from the claimed elongated rod. As is shown in Fig. 1 of Drewry, the elongate member 80 in Drewry’s spinal stabilization system 20 is secured to a plurality of anchors 30 to stabilize a portion of the vertebral column. See, col. 3, ll. 30-40 of Drewry. Drewry thus teaches no more than a spinal stabilization system 20 for stabilizing a portion of the vertebral column and does not render independent claim 21 obvious.

Accordingly, independent claim 20 patentably distinguishes over Drewry for at least the above reasons.

Independent claim 36 recites at least “providing a supporting member comprising a superelastic material for generating a correction force having a predetermined amount,” “the supporting member having a pre-contoured shape of a normal degree of kyphosis and lordosis of the patient’s spine,” and “applying the correction force to a deformed portion of the patient’s spine.” Independent claim 46 recites at least “applying a supporting member comprising a superelastic material to a deformed spinal portion of a recipient” and “the supporting member

has a pre-contoured shape of a normal degree of kyphosis and lordosis of the recipient's spine." Therefore, independent claims 36 and 46 are allowable for at least some of the above stated reasons in connection with independent claim 20.

In conclusion, independent claims 20, 36, and 46, as well as their dependent claims 21-22, 28-29, 34-35, 37-39, 41-45, and 47-49, are each allowable over Drewry.

Conclusion

Based on all of the above, the present application is now in proper condition for allowance. Prompt and favorable action to this effect and early passing of this application to issue are respectfully solicited.

Should the Examiner have any comments, questions, suggestions or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues.

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